the defendant which under the English law will result in an obligation to indemnify regardless of his intent, express or implied, there should at least be an anticipated benefit. And this would seem to be the rule in the previous English decisions.[11] Also in this country where, except in the cases of agency, there must be a promise to indemnify implied in fact, it would in general seem unfair to infer such a promise, unless the defendant expects to get some benefit from the act of the plaintiff.

POWER OF THE JUDICIARY OVER CONTROVERSIES INVOLVING POLITICAL QUESTIONS. — Since the time of Littleton it has been established law that the decision of political questions is without the province of the courts.[1] But a difficulty arises in determining what are political questions. In this country they would seem to be questions expressly reserved by the Constitution to either the executive or the legislature, and questions which are by the necessary implication of the Constitution so reserved — that is, questions the decision of which by the judiciary would obviously embarrass the action of the executive and legislature within their respective spheres, or which, owing to the superior sources of knowledge of the other two branches, the courts are ill-qualified to decide. Among such are questions as to the jurisdiction of different sovereignties,[2] the duly constituted government of a state,[3] and the status of Indian tribes.[4]

A crucial issue arises where a court is called upon to determine the rights of individuals to property within its jurisdiction when the decision necessarily involves the determination of a political question. As to international questions it is a well-settled rule of international law that municipal courts may determine the title to property situated within their jurisdiction, even though a political question is involved.[5] Accordingly, a foreign sovereign having property within the jurisdiction is amenable to the court's control, since by becoming the owner of the property he has incorporated himself into the juridical system under which he holds it and since a suit against him can be carried on without interfering in any way with any property necessary to the proper discharge of his functions as a sovereign.[6] In accord with this rule is the opinion of a recent case in India which confirms the right of the courts of British India to adjudicate the title to property situated therein belonging to a native prince not subject to the court's jurisdiction, in spite of the fact that the rules governing the descent of the property were the same as those governing the succession to the throne. But, on finding that the real object of the suit was to settle the succession, and that the property right involved was only contingent, the court denied its jurisdiction. *Shamarendra Chandra Deb Barman* v. *Birenda Kishore Deb Barman*, 12 Calcutta W. N. 777 (Calcutta High Ct., May 21, 1908).

Similarly the United States Supreme Court has held that a mere assertion of property rights will not give jurisdiction over a political question where

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[11] Carshore *v.* Ry., 29 Ch. D. 344; Sheffield Corporation *v.* Barclay, *supra.*

[1] Wambaugh's Littleton's Tenures, Introd. xxxiv, xxxv.

[2] Williams *v.* Suffolk Ins. Co., 13 Pet. (U. S.) 839; State *v.* Wagner, 61 Me. 178; Foster *v.* Neilson, 2 Pet. (U. S.) 253.

[3] Luther *v.* Borden, 7 How. (U. S.) 1.

[4] Farrell *v.* U S., 110 Fed. 942, 951.

[5] Neel Kisto Deb *v.* Beer Chunder, 12 Moore's Ind. App. 523, 534.

[6] The Charkieh, L. R. 4 Ad. & Ecc. 59, 97.

the assertion is merely added for the purpose of giving jurisdiction.[7] Accordingly, it would appear necessary that the property rights be not remote. Yet the Supreme Court held in a leading case that in boundary disputes between the states, the state's right of escheat to the property within its borders is a sufficient property right to render the question one for the judiciary, and that the sovereignty and jurisdiction of the states is merely incidental to the property rights involved.[8] The English cases relating to counties palatine [9] and to colonial governments [10] are cited as authority for this position. But in those cases the English courts had jurisdiction, not of causes between states, but of causes arising out of agreements between English subjects, who, when residing within the jurisdiction of the English courts, were, as English subjects, amenable to the processes of those courts. It is further reasoned [11] that a political question becomes a judicial one when submitted to the courts; but this reasoning should not have been applied where the defendant state submitted to the court's process by appearing and pleading, and then later moved a dismissal for want of jurisdiction.[12] The decision of the Supreme Court that its jurisdiction extends over boundary disputes between the states is settled law.[13] It is submitted, however, that the dissenting opinion of Chief Justice Taney [14] in the leading case contains the preferable view — that such disputes are political questions where the suit is not brought to try a right of property in the soil, but is rather brought to enforce the mere political jurisdiction of the state.

DISTRIBUTION OF THE PROCEEDS OF SECURITIES OF DIFFERENT CLASSES OF CUSTOMERS WRONGFULLY PLEDGED BY A BROKER. — It is the practice for a broker buying shares of stock on margin for a customer to have them registered in his own name, and he is impliedly authorized to pledge them to an amount not greater than that due him from his principal.[1] Similarly he has power to hypothecate shares indorsed to him in blank as collateral for an advance.[2] If he sells the stock or pledges it to an amount greater than his principal's obligation, without having in his possession or under his control other stock of the same description to replace it, he is guilty of a conversion.[3] Most courts, following New York, describe the relation of the broker to his customer as that of pledgor and pledgee.[4] The Massachusetts cases hold that only a contractual relation is established.[5]

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[7] Georgia *v.* Stanton, 6 Wall. (U. S.) 50.

[8] Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657, 734. See also Georgia *v.* Stanton, *supra*.

[9] Derby *v.* Athol, 1 Ves. 201; Bishop of Sodor and Man *v.* Derby, 2 Ves. 337, 355.

[10] Penn *v.* Baltimore, 1 Ves. 446; Nabob of the Carnatic *v.* E. India Co., 1 Ves. Jr. 370.

[11] Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657, 737.

[12] *Cf. ibid.* 719.

[13] New York *v.* Connecticut, 4 Dall. (U. S.) 4; New Jersey *v.* New York, 5 Pet. (U. S.; 284; U. S. *v.* Texas, 143 U. S. 621; Virginia *v.* West Virginia, 11 Wall. (U. S.) 39, 53; Mississippi *v.* Louisiana, 202 U. S. 1. See also 16 HARV. L. REV. 134.

[14] Rhode Island *v.* Massachusetts, *supra*, 752, 754.

[1] Skiff *v.* Stoddard, 63 Conn. 198.

[2] Lawrence *v.* Maxwell, 53 N. Y. 19. It is hardly necessary to add that a stockbroker is guilty of a conversion if he hypothecates stock which he holds as bailee. Tomkins *v.* Morton Trust Co., 91 N. Y. App. Div. 274.

[3] Tausig *v.* Hart, 58 N. Y. 425; Douglas *v.* Carpenter, 17 N. Y. App. Div. 329. For a discussion of this point, see 5 Am. Lawyer 573.

[4] Markham *v.* Jaudon, 41 N. Y. 235; Skiff *v.* Stoddard, *supra*.

[5] Covell *v.* Laud, 135 Mass. 41. For a discussion of the relation existing between broker and principal in margin transactions, see 19 HARV. L. REV. 529.